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Attorneys for Plaintiffs,
BMG MUSIC; SONY BMG MUSIC
ENTERTAINMENT; WARNER BROS.
RECORDS INC.; INTERSCOPE RECORDS;
ELEKTRA ENTERTAINMENT GROUP INC.;
MOTOWN RECORD COMPANY, L.P.; LAFACE
RECORDS LLC; FONOVisA, INC.; and UMG
RECORDINGS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BMG MUSIC, a New York general partnership;
SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; WARNER BROS.
RECORDS INC., a Delaware corporation;
INTERSCOPE RECORDS, a California general
partnership; ELEKTRA ENTERTAINMENT
GROUP INC., a Delaware corporation;
MOTOWN RECORD COMPANY, L.P., a
California limited partnership; LAFACE
RECORDS LLC, a Delaware limited liability
company; FONOVisA, INC., a California
corporation; and UMG RECORDINGS, INC., a
Delaware corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06034-RMW

Honorable Ronald M. Whyte

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for March 28, 2008, at 10:30 a.m. to July 25, 2008. Plaintiffs further request, pursuant
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days – until June 26, 2008 – to serve Defendant with the Summons and Complaint. As
5 further explained below, Plaintiffs have not yet discovered the identity of the Doe defendant in this
6 case, and cannot move this case forward until they do so. In support of their request, Plaintiffs state
7 as follows:

8 1. The initial case management conference is set for March 28, 2008. The current
9 deadline for service of process is March 28, 2008. No previous continuances or extensions have
10 been requested or granted in this case.

11 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
12 Doe on November 29, 2007. Plaintiffs did not have sufficient identifying information to name
13 Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol address
14 assigned to Defendant by Defendant's Internet Service Provider ("ISP") – in this case, the University
15 of California-Berkeley. In order to determine the true name and identity of the Doe defendant,
16 Plaintiffs filed their *Ex Parte* Application for Leave to Take Immediate Discovery on November 29,
17 2007, requesting that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the
18 ISP.

19 3. The Court has not yet ruled on Plaintiffs' *Ex Parte* Application for Leave to Take
20 Immediate Discovery. Accordingly, Plaintiffs have been unable to serve a subpoena on the ISP to
21 obtain the identity of the Doe defendant.

22 4. If the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take Immediate
23 Discovery, Plaintiffs will promptly serve a Rule 45 subpoena on the ISP seeking information
24 sufficient to identify Defendant. If Plaintiffs discover Defendant's identity, Plaintiffs intend to
25 contact Defendant and attempt to resolve the dispute. If the dispute cannot be resolved, Plaintiffs
26 intend to file a First Amended Complaint naming Defendant personally, and then proceed to serve
27 process upon him or her. However, until Plaintiffs discover Defendant's identity, they are unable to
28

1 initiate settlement discussions, name him or her personally in this action, or serve him or her with
2 process.

3 5. Given the circumstances of this case, Plaintiffs respectfully request that the case
4 management conference be continued to July 25, 2008, or such other date as conveniences the Court.
5 Plaintiffs further request an additional 90 days – until June 26, 2008 – to effectuate service.

6 6. Plaintiffs' submit that the filing of their *Ex Parte* Application for Leave to Take
7 Immediate Discovery demonstrates "good cause" under Rule 4(m) for an extension of time for
8 service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause
9 standard for service extensions). Unlike a traditional case in which the defendant is known by name
10 and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first must
11 obtain the identity of the defendant through the subpoena to the ISP, a process which is not yet
12 complete. This Court has discretion to enlarge the time to serve even where there is no good cause
13 shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

14 7. Because the copyright infringements here occurred in 2007, the three-year limitations
15 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
16 prejudice to the Defendant from any delay in serving the Complaint.

17 8. Plaintiffs will provide the Defendant with a copy of this request and any Order
18 concerning this request when service of process occurs.

19 Dated: March 17, 2008

HOLME ROBERTS & OWEN LLP

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21 By: /s/ Matthew Franklin Jaksa
22 MATTHEW FRANKLIN JAKSA
23 Attorney for Plaintiffs
24 BMG MUSIC; SONY BMG MUSIC
25 ENTERTAINMENT; WARNER BROS.
26 RECORDS INC.; INTERSCOPE
27 RECORDS; ELEKTRA
28 ENTERTAINMENT GROUP INC.;
MOTOWN RECORD COMPANY, L.P.;
LAFACE RECORDS LLC; FONOVisA,
INC.; and UMG RECORDINGS, INC.

[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26, 2008.

IT IS FURTHER ORDERED that the case management conference currently set for March 28, 2008, at 10:30 a.m. be continued to July 25, 2008.

Dated: _____

By: _____
Honorable Ronald M. Whyte
United States District Judge